UNITED NATIONS

General Assembly

FORTY-FIFTH SESSION

Official Records

SIXTH COMMITTEE
11th meeting
held on
Monday, 8 October 1989
at 10 a.m.
New York

SUMMARY RECORD OF THE 11th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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A/C.6/45/SR.11
10 October 1990

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The meeting was called to order at 10.30 a.m.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/45/33)

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/45/436 and Add.1, A/45/522-S/21795, A/45/527-S/21801; A/C.6/45/L.1)

1. Mr. TCHIVOUNDA (Gabon) said that his delegation welcomed the working paper submitted by the Union of Soviet Socialist Republics on new issues for consideration in the Special Committee (A/AC.182/L.65). Establishing a peaceful climate in international relations called for the promotion of the rule of law, which could be guaranteed only through more effective United Nations involvement. Although a world war was no longer likely, the need to eliminate regional hotbeds of conflict remained a matter of great concern. Enhanced co-operation between regional organizations and the United Nations was therefore essential. However, the current situation in fact revealed the limits of the very concept of a regional conflict, as compared with the concept of a world war, while also revealing the limited ability of the United Nations, acting alone, to settle a "crisis" - a new concept very different from the concepts of conflict and war, which presupposed a state of belligerency. In any event, the current situation revealed the indifference of the United Nations towards some crises, even though they represented the same sort of challenge to the conscience of the world as the crisis upon which attention was currently focused. There was no reason why different approaches should be taken to the fate of the Kuwaiti, Palestinian, Lebanese or Liberian peoples. The Organization must work on behalf of all the "peoples of the United Nations", as stated in the Charter.

2. Law was indivisible by its very nature, but its indivisibility was derived chiefly from its application. The issue of the implementation of legal norms formed the core of the proposal that the Secretary-General's peace-making efforts should be broadened. That approach was fundamentally normative. His delegation believed in that connection that Article 99 of the Charter contained a key provision.

3. In considering document A/AC.182/L.65, the Special Committee should take care to avoid repetition and any possibility of interfering with the work of other subsidiary bodies of the General Assembly. For example, it was quite clear that, if anything, the proposal concerning the elaboration of a draft general instrument on peaceful settlement of disputes represented a step backwards, unless the aim was to call into question rules already laid down either in the Charter itself or in other specific instruments.

4. It was equally clear that the proposal that the Special Committee should consider the question of ways and means of implementing international law as well as related enforcement actions vis-à-vis a State that had violated international law fell within the sphere of State responsibility, and was thus more in the

(Mr. Tchivounda, Gabon)

province of the International Law Commission. Until the draft articles already adopted or under preparation acquired the force of law and were being implemented, it would be premature to identify limits and to consider to what extent such limits had been exceeded. It would, however, be appropriate for the Special Committee to consider such topics as the preventive functions of the United Nations and the collective security régime provided for in the Charter.

5. Gabon welcomed the outcome of the Special Committee's consideration of the question of the maintenance of international peace and security, as reflected in document A/AC.182/L.68 (A/45/33, para. 68). On the whole, that document took account of the concerns voiced and recommendations made in the Sixth Committee at the forty-fourth session of the General Assembly. He wished merely to stress that the institutionalization of fact-finding in the context of the United Nations would be worth while only if strictly in keeping with the spirit and the purpose of the instrument in question. International fact-finding should have as its sole purpose the conduct of an investigation. It must be a way of exploring actual situations, not a deterrent or a means of resolving rival claims. It must not become a form of decision-making machinery.

6. He wished to suggest a number of ways in which both the form and the substance of the document might be improved. Where form was concerned, the text of paragraphs 9 and 10, currently in section II, should be inserted at the end of section I, after paragraph 4. Paragraphs 5 to 8 would remain the same, and should simply be renumbered. That structural change would emphasize the principle of complementarity that should govern the conduct of both States and the United Nations in fulfilling their obligation to maintain international peace and security.

7. He also wished to suggest a number of drafting changes. Paragraph 2 should be reworded to read:

> "2. For the purpose of the present paper, fact-finding means any activity which involves the investigation of facts resulting in a situation constituting a threat to peace, a breach of the peace or aggression, and which is designed to enable the competent United Nations organs to exercise effectively their functions in the field of the maintenance of international peace and security."

In current paragraph 6, which would become paragraph 8 if Gabon's amendment was accepted, the word "responsibilities" should be replaced by the words "areas of competence".

Moreover, current paragraph 7, which would become paragraph 9, should be redrafted to read:

> "9. In deciding to which organ to entrust the conduct of a fact-finding mission, the Security Council and the General Assembly should give preference to the Secretary-General, who may designate a special representative or a

(Mr. Tchivounda, Gabon)

group of experts for that purpose. Resort to an ad hoc subsidiary body which the Security Council or the General Assembly would establish may also be considered".

8. Where the substance of the document was concerned, his delegation had reservations about giving States the option of making a prior unilateral declaration to the effect that they intended to admit a fact-finding mission to their territory. It had misgivings about turning an obligation into an option. Difficulties would inevitably arise if paragraphs 18 and 19 could be considered as having been included in the text in order to counterbalance the principle of the receiving State's prior consent, which was set out in paragraph 13.

9. Mr. TREVES (Italy) said that the points made by the Secretary-General in his report on the work of the Organization (A/45/1) concerning the legal and institutional aspects of the maintenance of international peace and security deserved consideration by the Sixth Committee. He drew attention to the twelfth paragraph of section III of the report, in which the Secretary-General challenged the conventional view that diplomatic initiatives conducted within a regional framework were preferable to efforts made to settle disputes under the auspices of the United Nations. The importance of the role of States and of regional organizations compared with that of the United Nations had been amply discussed, in particular during the period leading up to the adoption of General Assembly resolution 43/51 concerning the prevention and removal of disputes and situations which might threaten international peace and security and the role of the United Nations in that field. In the light of the recent successes of the United Nations in maintaining international peace and security, and the less successful record of other mechanisms, he suggested that the question might suitably be considered within the framework of the United Nations Decade of International Law. It should also be borne in mind that the regional approach had made an important contribution to the prevention of disputes, especially in Europe. For example, the Conference on Security and Co-operation in Europe had played an important role in overcoming East-West tensions.

10. Drawing attention to the nineteenth paragraph of section III of document A/45/1, concerning action under Chapter VII of the Charter, he agreed with the Secretary-General that such action was "a measure of last resort". His country firmly believed in the importance of preventive diplomacy, as shown by its support for the adoption of General Assembly resolution 43/51 and its sponsorship of the proposal on fact-finding which the Special Committee on the Charter had been discussing since 1989. In that connection, he shared the view expressed in the sixteenth paragraph of section III of document A/45/1 concerning the inadequacy of the means currently at the disposal of the Secretary-General for gathering the timely, accurate and unbiased information that was neccessary for averting violent conflicts. That point had been addressed in the proposal on fact-finding. Although the proposal had been well received in general, the paragraphs dealing with information-gathering by the Secretary-General had raised some concerns. In the light of the Secretary-General's report, it might be useful to re-examine the question with a view to developing more imaginative solutions.

(Mr. Treves, Italy)

11. He drew attention to paragraph 68 of the report of the Special Committee (A/45/33), containing the text of a proposal on the maintenance of international peace and security which had been issued as document A/AC.182/L.66. Although the submission of that document had marked a turning-point in the Special Committee's consideration of the item, further discussion was necessary, particularly with regard to the question of the access of fact-finding missions to the territories of Member States. The document made it clear, however, that such missions required the consent of the State to whose territory they were sent. Hence, the suggestion in paragraph 14 that States should be encouraged to follow a policy of admitting United Nations fact-finding missions to their territory should be viewed merely as a policy suggestion.

12. Turning to chapter IV of document A/45/33, dealing with the peaceful settlement of disputes, he noted the promising signs of evolution in that area, including the unprecedented number of cases under consideration by the International Court of Justice, and the growing acceptance of the Court's jurisdiction. The creation of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice also reflected a new and more realistic approach to the problems of international justice.

13. He also drew attention to the recommendation made in the last paragraph of section III of document A/45/1, that the Secretary-General should be given the authority to request an advisory opinion from the Court. He wondered whether the Secretary-General was proposing that an amendment should be made to Article 96, paragraph 1, of the Charter which authorized the General Assembly and the Security Council to request such an opinion from the Court, or that the Secretary-General should be so authorized by the General Assembly, as provided for in paragraph 2 of that Article. In that connection, he noted that the General Assembly had refrained from authorizing organs which were not composed of States to request advisory opinions from the Court, despite the fact that such opinions had been requested by the General Assembly concerning various items originally placed on its agenda by the Secretary-General. However, the time had come to take a fresh approach to the subject, in view of the complementary relationship between the Security Council and the Secretary-General, and the latter's involvement in almost all situations bearing upon international peace and security.

14. The items under consideration by the Special Committee were currently at the centre of attention. The question remained of how to co-ordinate its work with that relating to the United Nations Decade of International Law. Although the Special Committee might have a role to play with regard to the Decade, it had a specific function to perform with regard to the law of the United Nations, as expressed in the Charter and the practice which had developed within the framework of the that instrument. The Special Committee should remain the main forum for United Nations activity in matters concerning the legal and institutional aspects of the maintenance of international peace and security.

(Mr. Treves, Italy)

15. As the peaceful settlement of disputes was certain to be a central focus of the Decade of International Law, he believed that, in the interest of rationalizing the Organization's work on that topic, it did not require a separate agenda item.

16. Mr. BELLO-FADILE (Nigeria) said that the maintenance of international peace and security was the major role that the United Nations was called upon to play. National interests could no longer be separated from global interests, because of the increasing economic and political interdependence of States. Moreover, the recent international co-operation in solving global problems showed that States needed only to display the necessary political will in order to resolve most of the thorny issues facing the world.

17. When a potentially dangerous situation developed, the United Nations should consider sending an impartial fact-finding mission, subject to the consent of the parties to the conflict. For their part, States should encourage and support such missions.

18. With regard to the peaceful settlement of disputes, he regretted that some delegations had so far been unable to support General Assembly resolution 43/51 concerning the prevention and removal of disputes and situations which might threaten international peace and security and the role of the United Nations in that field, and hoped that unanimity on that question would soon be forthcoming. Nigeria supported efforts to strengthen co-operation between the United Nations and regional organizations. Voluntary efforts by regional organizations should not pose a threat to the sovereignty of feuding States, but should rather be in their interest. The explosive nature of the civil war in Liberia had required the intervention of the Economic Community of West African States, in an effort to arrange a cease-fire and establish a transitional government.

19. With regard to the rationalization of existing United Nations procedures, developments within the international community called for some adjustments to be made to the Organization's principal decision-making bodies in order to ensure wider participation by the various regions not currently represented. That approach would lead to firmer commitments and a deeper involvement on the part of Member States, and would make for a more balanced expression of views. The situation was particularly urgent with regard to the composition of the Security Council, where the principle of universality should be fully respected.

The meeting rose at 11.25 a.m.

UNITED NATIONS

General Assembly

FORTY-FIFTH SESSION

Official Records

SIXTH COMMITTEE
12th meeting
held on
Wednesday, 10 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 12th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.20 a.m.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/45/33)

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/45/436 and Add.1, A/45/522-S/21795, A/45/527-S/21801; A/C.6/45/L.1)

1. Mr. TOMKA (Czechoslovakia) said that the movement in the international community from confrontation to co-operation would enhance the role of international organizations, especially the United Nations. The completion of the process leading to Namibian independence represented a major success for the Organization; however, it was now confronted with a new crisis resulting from the aggression perpetrated by Iraq with its unlawful annexation of Kuwait. The unequivocal condemnation of that aggression within the United Nations body which bore the primary responsibility for international peace and security, namely the Security Council, as well as the steps taken by the Council, had the full support of his Government.

2. The favourable changes in the international community were reflected in the report of the Special Committee on the Charter (A/45/33). The Special Committee had made progress, especially on the topic of fact-finding, thanks to the method it had chosen for consideration of the original proposals. With the formulation of a unified document (A/AC.182/L.66), the Special Committee's work on that subject had entered a new phase.

3. The unified document described fact-finding as any activity designed to ascertain facts which the competent United Nations organs needed to exercise effectively their functions in the field of the maintenance of international peace and security; it was important, therefore, to bear in mind the linkage between fact-finding and the performance of functions in all future deliberations on the subject. The unified document also stated that fact-finding missions might be undertaken by the Security Council, the General Assembly and the Secretary-General, in the context of their respective responsibilities in maintaining international peace and security; it should be noted that, according to the Charter, those respective responsibilities differed considerably. The unified document covered, in a balanced form, both legal and political aspects, and that should help to create an atmosphere in which States, knowing precisely under what conditions United Nations fact-finding was to be used, would contribute to its more frequent and unrestricted utilization. It now seemed possible that the document on fact-finding might be finalized at the next session of the Special Committee; his delegation, which was one of the sponsors of the document, was prepared to do its utmost to that end.

4. Turning to the question of peaceful settlement of international disputes, he said that first and foremost, it would be worth while to review the existing means of peaceful settlement and their utilization, and to evaluate the present legal

(Mr. Tomka, Czechoslovakia)

provisions in that sphere. Special attention should be paid to the use of the principal judicial organ of the United Nations, the International Court of Justice, whose latest reports indicated that the confidence of States in it was beginning to grow stronger, and that countries were turning to it more often than in the past. Czechoslovakia, too, had taken a new approach towards the Court, abandoning the rigid postures of the past. His Government had reconsidered the reservations made earlier with regard to those provisions of multilateral international treaties that conferred upon the Court compulsory jurisdiction. The Government had already expressed consent to the withdrawal of 25 reservations; 20 of those cases had to be approved by the Parliament. The withdrawal procedure should be completed before the end of 1990. In addition, accession to the four Optional Protocols that provided for compulsory jurisdiction of the Court was under consideration. The Czechoslovak authorities were also considering the possibility of recognizing the Court's jurisdiction in general, on the basis of a declaration under Article 36, paragraph 2, of the Statute of the Court. In that connection, his delegation noted with interest that Poland had recently become the fifty-second State to recognize compulsory jurisdiction of the Court in general.

5. Czechoslovakia had demonstrated its changing attitude towards the Court by providing, in early July, its first contribution to the Trust Fund to Assist States in the Settlement of Disputes through the Court. In the European context, his delegation expected that mechanisms for the peaceful settlement of disputes would be further strengthened through the expert meeting on the subject that was scheduled to take place in Malta in January and February 1991, as one of the follow-up events of the Conference on Security and Co-operation in Europe.

6. During the most recent session of the Special Committee, members had been provided with information on the progress made by the United Nations Secretariat in preparing a handbook on the peaceful settlement of disputes. His delegation appreciated the efforts made by the Secretariat to finalize the handbook, and hoped that it would be completed and made available soon. With regard to the rationalization of existing United Nations procedures, his delegation felt that the draft originally initiated by France and the United Kingdom could lead to further improvement of the Organization's work and a more rational use of existing resources. His delegation recommended that the document should be adopted by the General Assembly at the present session.

7. Noting that it was reasonable to expect an early completion of the document on fact-finding, he said that it was time to give thought to the future programme of work of the Special Committee. In that connection, the working paper submitted by the Union of Soviet Socialist Republics (A/AC.182/L.65) offered a number of suggestions that deserved more detailed consideration, especially in the area of preventive diplomacy in the United Nations and the system of collective security. Valuable ideas had also been presented by the representative of Italy at the 11th meeting of the Sixth Committee (A/C.6/45/SR.11), in connection with the report of the Secretary-General on the work of the Organization.

8. Mr. BOTERO (Colombia) said that, despite recent encouraging developments on the international scene, the world was still adversely affected by the use of force and the actions of those who wished to further their own individual interests. It was essential to create a true awareness of the need for all nations to live together in peace, in order that all might have an equal voice and that the peoples of the world might have the opportunity to have recourse to mechanisms for preventing breaches of the peace and international security or for restoring peace and security when they had been affected. His delegation noted with satisfaction the work done by the Special Committee on the Charter in its study of the document on fact-finding by the United Nations in the field of the maintenance of international peace and security (A/45/33, chap. III). Nevertheless, there was room for improvement in the draft, especially with regard to its treatment of such important matters of principle as non-interference in the domestic affairs of States on the part of the Organization, respect for sovereignty and respect for the competence assigned by the Charter to the various bodies of the Organization. In that regard, his delegation felt that the first cluster of paragraphs should include prior consent of the receiving State as a prerequisite for the sending of a fact-finding mission, in order to comply with Article 2 , paragraph 7, of the Charter, without prejudice to the scope of Article 25. By the same token, his delegation was opposed to the inclusion of paragraph 17 in the draft, because it was harmful to the sovereign interests of States.

9. His delegation appreciated the efforts made by the Legal Counsel to finalize the draft handbook on the peaceful settlement of disputes between States, which could make a valuable contribution to the maintenance of international peace and security. His delegation agreed with the group of countries that wished to include the question of the maintenance of international peace and security on the agenda of the Decade of International Law. That would be consistent with the desire to promote and develop all possible means of peaceful settlement of disputes, including a general convention, and the acceptance of the compulsory jurisdiction of the International Court of Justice. Thus, the Special Committee on the Charter would be able to discuss more thoroughly the matters assigned to it.

10. His delegation endorsed the terms agreed on in the negotiations on the draft on rationalization of existing United Nations procedures. The text reflected significant progress, particularly with regard to two points: (a) the matter of the holding of informal consultations with the widest possible participation of Member States with a view to facilitating the adoption by the General Assembly of agreed texts of resolutions and decisions; (b) the provision that before the end of each General Assembly session, the General Committee should, in the light of the experience acquired during that session, draw up its observations on the organization of the work of the session. The rationalization of procedures would greatly enhance the work of the General Assembly. In fact, it might be advisable to consider extending the study of rationalization to some of the other principal and subsidiary organs of the United Nations.

11. It was important that bodies such as the Security Council should project an image of effectiveness in the maintenance of international peace and security, and to that end it was essential that the unanimity required of the permanent members

(Mr. Botero, Colombia)

should be applied in such a way as to cause the least possible negative effect on the nations concerned. In the legal sphere, the permanent members should recognize the compulsory jurisdiction of the International Court of Justice, inasmuch as that would strengthen the system for the peaceful settlement of disputes and give an example to countries which had not yet recognized the Court's jurisdiction. Colombia was proud to have recognized the compulsory jurisdiction of the Court more than 40 years ago.

12. Mr. RANJEVA (Madagascar) said that a profound upheaval was taking place both in the structure of international relations and in the legal and institutional framework of the United Nations. In view of the latest developments on the world scene, it was important now to redouble efforts, not only with regard to peace-keeping and international security, but also with regard to fact-finding activities by the United Nations in the field of the maintenance of international peace and security, and the peaceful settlement of disputes between States.

13. On the question of the maintenance of international peace and security, he noted that it was no longer impossible to imagine that recourse might indeed be made to Chapter VII of the Charter. Events had confirmed the provisions of the Charter; that was the most important development in the constitutional history of the Organization. The decisions taken in 1990 had freed the institutions of the Organization from paralysis, both at the legal level and at the political level. No longer would serious questions be raised as to the usefulness of the Organization. The understanding reached by the permanent members of the Security Council had cleared the way for implementing the provisions of Chapter VII of the Charter. It was also important to note, however, that as far as peace-keeping was concerned, the Organization must implement Chapter VI, on the pacific settlement of disputes, as well as Chapter VII, on action with respect to threats to the peace, breaches of the peace, and acts of aggression. It was important now to determine under what circumstances Chapter VII should be implemented, bearing in mind the latest decisions of the Security Council, and in which cases Chapter VI should be applied. The answer was obvious: it depended on the attitude of the great Powers, which should be invited to review, calmly and sincerely, their role in the maintenance of peace.

14. Turning to the question of fact-finding, he stressed that international détente could be enhanced by a clear knowledge of the facts relating to a given situation. Uncertainty fed rumours, which were in themselves distortions of the facts. Hence, the Special Committee should complete its work in connection with fact-finding. Previous speakers had mentioned the important question of access by fact-finding missions to the areas concerned. He wondered whether there might not be a danger of foundering in speculation on legal matters, for lack of an understanding of the historical, technological and political background of a given situation. With regard to history, he recalled that until recently, the main method used for reporting facts had been that of wire dispatches, which could disappear or become blurred in the memory of participants and witnesses very quickly. The age of secret diplomacy had come to an end, and it was no longer possible to conceal anything. New technology, more specifically, information and

(Mr. Ranjeva, Madagascar)

communications technology, should be embraced whole-heartedly for the purposes of fact-finding.

15. It could be seen from the relationship between fact-finding and maintaining peace that the chief difficulty was political. Knowing facts was of little value unless it enabled the United Nations to anticipate events. Without the ability to anticipate events, fact-finding for the purposes of the maintenance of peace was likely to be quite pointless. Anyway, if the United Nations did not fill that gap effectively, others would be sure to do so in its place, but the question was for whose benefit.

16. His delegation supported the proposals on the peaceful settlement of disputes between States. However, it wished to stress that disputes must be settled on the basis of positive law. Promotion of the concept of the rule of law in the settlement of disputes should be considered in the context of the Decade of International Law.

17. Mr. KOSKENNIEMI (Finland) said that the Special Committee had continued to work in a constructive spirit over the past year, but there was cause for some concern about the significance of its output. Although the discussion on the fact-finding capabilities of the United Nations was a useful exercise, the other questions under consideration by the Special Committee would fall short of constituting a full mandate once the work on fact-finding had been concluded. In that respect, his delegation welcomed the suggestions made by the Soviet Union regarding new issues for consideration in the Special Committee.

18. Over the past few years, the Special Committee's main focus had been on the maintenance of international peace and security, particularly the question of enhancing United Nations fact-finding capabilities. Although General Assembly resolution 44/37 had also mandated the Special Committee to consider other proposals relating to the maintenance of international peace, no substantive discussion had been held on such proposals. The Special Committee's most significant achievement in the past year was the unified document on fact-finding (A/45/33, para. 68). To be sure, several provisions of the paper in question still needed further thought and reformulation. There was, for example, clearly some overlap and uncertainty in the formulation of paragraphs 12 to 17. In Finland's view, there should be a stronger emphasis on the assumption that in general consent should not be withheld. Paragraphs 18 and 19 concerning unilateral declarations were interesting, and that subject might be given a more prominent place. Furthermore, entrusting fact-finding functions to international organizations or their representatives might be a suggestion worth consideration.

19. Under the item on the peaceful settlement of disputes between States, the Special Committee had only the draft handbook to consider. While the handbook would be a very useful instrument, Finland had some doubts as to whether it justified keeping the item on the Special Committee's agenda. Of course, at the Special Committee's most recent session, there had been a general exchange of views on the importance of mechanisms for peaceful settlement and on the Decade of

(Mr. Koskenniemi, Finland)

International Law, now under discussion as a separate item by the Sixth Committee. However, no additional substance had emerged, despite the fact that General Assembly resolution 44/37 called for proposals to be submitted to the Special Committee. In the future, the topic of the peaceful settlement of disputes between States should therefore be discussed not as a specific item on the agenda of the General Assembly but, rather, in the context of the Decade or in the Special Committee.

20. The other noteworthy development in the Special Committee had been the completion of the draft document on the rationalization of existing United Nations procedures. Finland fully supported the increasing use by the General Assembly of co-ordination, streamlining and informal consultations. With the adoption by the General Assembly of the draft document, there would be even more pressure to agree on new subjects to be taken up by the Special Committee.

21. Recent political events in the world had lifted Chapter VII of the Charter from oblivion. Since the recent adoption of certain resolutions by the Security Council, particularly resolution 661 (1990), it had become evident that Chapter VII was silent on what might be called "sanctions management". Many of the problems confronted by the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait had been either unprecedented or such that the relevant Articles of the Charter themselves gave no indication of how to deal with them.

22. The plight of third-country citizens, stranded in the State against which the United Nations had decided to take measures, was one such problem. Although humanitarian circumstances constituted an exception to a sanctions régime, there were no guidelines on how the determination of such circumstances should take place. A second set of problems related to action under Article 50 of the Charter. While Article 50 entitled countries confronted with special economic problems to consult the Council, there was no indication in the Charter as to how such problems should be assessed and what kinds of measures, if any, the Council should take in order to deal with them. Thirdly, there was the issue of the general management of economic sanctions, including the authority to interpret the relevant resolutions and measures to ensure full enforcement.

23. The application of Chapter VII would always have to be based on the character of the individual situation. Nevertheless, the existence of general, flexible guidelines on some aspects of sanctions management might facilitate rapid Council action and provide Member States with a better picture of what was expected of them if such action was contemplated.

24. The Sixth Committee would soon have to consider what new items should be dealt with by the Special Committee. Some of the concrete, practical problems relating to action under Chapter VII might be worthy of consideration. Such problems could be taken up by the Special Committee under the item on the maintenance of international peace and security, once consideration of the question of fact-finding had been completed or perhaps even before that. The report of the

(Mr. Koskenniemi, Finland)

Collective Measures Committee submitted to the General Assembly at its sixth session gave a good idea of what the Special Committee might aim to achieve.

25. Mr. KORNBLUTH (Israel), referring to the issue of the peaceful settlement of disputes, said that Israel had recent experience, from the work of the Egypt-Israel Arbitration Tribunal, with arbitration combined with certain elements of conciliation. That had been a successful combination of methods.

26. On the subject of fact-finding, he had some comments concerning the clusters of paragraphs based on the two relevant working papers. With regard to cluster 1, Israel supported the view that the sending of any fact-finding mission required the receiving State's prior consent. Such consent could not be merely implied. It was a matter closely related to the concept of the sovereignty of States. The problem of consent did not simply arise where there was an unauthorized intrusion into the sovereignty of a State, because, inter alia, the question of who was to decide exactly what amounted to an unauthorized intrusion and when such an intrusion had occurred remained completely open. Once the prior express consent of the receiving State had been granted, many of the other issues involved in the mission's work became much easier to solve.

27. Cluster 2 embodied the crucial concept of the fact-finding mission's impartiality. The greater the prospect of impartiality, the greater the likelihood that States would consent to the entry of a fact-finding mission. Many States had in the past been extremely reluctant to admit foreign fact-finding missions. Israel believed that the element of impartiality could be strengthened primarily by ensuring that the members of the mission were acceptable both to the sending body and to the receiving State. At the very least, the members of the mission should be nationals of countries that had diplomatic relations with the receiving State. A guarantee of impartiality functioned as a confidence-building mechanism to enhance the likelihood of consent. The opposite situation could have negative implications, because a mission that failed to act impartially might aggravate the problem on the ground.

28. It was an established principle that, unless otherwise provided by the Charter itself, States involved in a dispute had a free choice of the means of settling the dispute. Fact-finding was merely one of the possible means of peaceful settlement. It would, therefore, be totally incongruent with the principle of free choice for one of the possible methods to be forced on a State. Yet that was exactly the situation that would be created if the fact-finding mission's work was not contingent on the receiving State's consent. The idea of the need for consent should be clearly stated in the body of the text being considered by the Special Committee and not just be mentioned in the preamble. Consent could not be presumed by silence. And no State could be required to give reasons for not admitting a mission. The co-operation and consent of States would be essential to the success of fact-finding over the years to come. Each State would pay careful attention to the practice of other States that had faced similar situations.

(Mr. Kornbluth, Israel)

29. Although it was by no means certain that a detailed list of facilities to be granted to the mission would be useful, a kind of model list of desiderata could perhaps serve as the basis of an agreement between the mission, or the sending organization, and the receiving State. Moreover, having accepted the mission's presence, a State would have an interest in co-operating and ensuring the mission's success, except in the unlikely event, which had nevertheless to be guarded against, that the mission proved hostile or provocative with regard to the situation on the ground.

30. In connection with cluster 7, he again stressed the principle of free choice of means for the peaceful settlement of disputes.

31. As for the text of the unified document (A/45/33, para. 68), Israel welcomed the safeguards provided under paragraphs 3 and 5. Paragraph 9 recognized by implication the principle of free choice of means of dispute settlement. That principle was worthy of express mention in the text. Furthermore, Israel agreed with the requirement of consent in paragraph 13, for the reasons already outlined.

32. On the issue of the functioning of the mission once it was established, paragraph 25 in effect encompassed the idea that mission members should not themselves act in a provocative manner. With regard to the hearings mentioned in paragraph 27, it would perhaps be advisable for the receiving State to agree separately, and in advance, to such hearings. Israel believed that paragraph 30 might involve unnecessary expense, and also considered that the action envisaged by paragraph 35 was already encompassed in the Secretary-General's existing powers under the Charter. Paragraph 26 should include a guarantee that the receiving State would be invited to comment on and respond to any point or allegation made in the course of the fact-finding mission, before the mission left its territory. Moreover, it would seem equally appropriate to enable the receiving State to express its views again at a later stage, before the report was submitted to the requesting body.

33. Mr. MOREIRA LIMA (Brazil), drawing attention to paragraph 13 of document A/45/33, noted that progress had been made recently in the work of the Special Committee. He commended the efforts which had resulted in a unified document on fact-finding (A/AC.182/L.66), as the document provided a sound basis for the Special Committee's continued work in that area.

34. While it was indisputable that fact-finding activities were fully in keeping with Articles 24, 34 and 99 of the Charter of the United Nations, the consent of the receiving State or States should be secured whenever the sending of a fact-finding mission was under serious consideration, as stated in paragraph 52 of document A/45/33. On the other hand, the suggestion made in that paragraph that a provision dealing with prior consent could be better placed in the preamble to the text being formulated might create a degree of ambiguity, thus weakening a fundamental principle of international law.

35. Paragraphs 70 to 77 of the report of the Special Committee showed that there had been a useful exchange of views on the question of the peaceful settlement of

(Mr. Moreira Lima, Brazil)

disputes. He welcomed the adoption by the General Assembly, in its decision 44/415, of the Special Committee's proposal on resort to a commission of good offices, mediation or conciliation within the United Nations.

36. Noting with satisfaction that further progress had been made in reviewing and improving the text of the draft handbook on the peaceful settlement of disputes, he expressed the hope that the draft handbook would be completed before the next session of the Special Committee. It would be a useful tool for future deliberations on the item.

37. Drawing attention to the draft document on the rationalization of existing procedures of the United Nations (A/AC.182/L.43/Rev.5), he noted that paragraph 1 of that document had been reformulated, as mentioned in paragraph 85 of the report of the Special Committee. The discussions concerning the earlier version of that paragraph had been based on the erroneous idea that consensus was necessary for the adoption of "more efficient" resolutions. While consensus was certainly desirable, it could not be construed in such a way as to apply necessarily to any decision-making process; the basic principle underlying the sovereign equality of States must not be disregarded. To wish for consensus to be grafted on to the rules of procedure of a body like the General Assembly would be to vitiate the purpose which that body was intended to serve.

38. Recalling the history of the Special Committee, he said that although the Committee's mandate at its inception in 1955 had been to consider fixing an appropriate time and place for a general conference to review the Charter in accordance with Article 109, paragraph 1, of that instrument, it had been clear at the time that such a conference would be an exercise in futility, since there had been no basis for agreement upon previously suggested reforms. From 1967 on, the Special Committee had encountered stiff opposition to proposals for substantial reforms affecting the relative roles of the General Assembly and the Security Council. In 1963, the General Assembly had adopted amendments to the Charter to enlarge the membership of the Economic and Social Council and the Security Council. However, fundamental change within the United Nations had taken place largely through informal procedures rather than through formal amendments.

39. That experience raised several basic questions, such as whether the formal amendment process was too rigid to allow for the requisite adjustments to changing world conditions. If Member States became convinced that a more integrated international system was necessary, he wondered whether the Charter would be a viable instrument.

40. There was currently a widespread view that the Organization's mandate was being strengthened and its role expanded. As the cold war was coming to an end, a period of growing interdependence was beginning, and the need for greater co-operation among peoples and countries was being felt. It was becoming increasingly clear that maintaining peace and security was not the prerogative of a few States, but rather the shared responsibility of all. The transition from confrontation to co-operation in international relations could hardly be made and sustained without strengthening the rule of law under the Charter.

(Mr. Moreira Lima, Brazil)

41. As pointed out by the Brazilian President in his recent statement to the General Assembly, the world had not stopped in 1945. As the fiftieth anniversary of the United Nations approached, the time had come to bring certain aspects of the Charter into line with contemporary realities. For example, the existing provisions relating to the composition of the Security Council could be re-examined, and obviously anachronistic clauses, such as the reference in Article 107 to "enemy" States, could be eliminated.

42. Mr. MUNTEANU (Romania) said that the submission to the Special Committee of a unified document on fact-finding (A/AC.182/L.66) showed that a promising consensus existed with regard to strengthening the capacities of the United Nations in that area. Drawing attention to paragraph 6, which provided that fact-finding missions could be undertaken by the Security Council, the General Assembly and the Secretary-General, he said that the Security Council's united and firm approach to the current Gulf crisis would have a lasting impact on its increased ability to fulfil its functions in maintaining international peace and security. Paragraphs 31 and 32 were also timely in that they sought to strengthen the Security Council's capacity to promote preventive diplomacy.

43. His delegation welcomed the understanding which had been reached on the need for prior consent by States to the sending of fact-finding missions, as clearly stipulated in paragraph 13. It also endorsed the provision in paragraph 35 on enhancing the Secretary-General's capacity to provide early warning of situations which might threaten international peace and security. Where appropriate, the Secretary-General should bring relevant information to the attention of the Security Council. It was to be hoped that the drafting process could be completed at the Special Committee's 1991 session, and that the General Assembly would then be in a position to adopt a meaningful consensus document on fact-finding by the United Nations.

44. With regard to the rationalization of existing procedures of the United Nations, he emphasized the practical value of the Special Committee's recommendations, as set out in paragraph 86 of its report, particularly paragraphs 4 and 9 of the recommendations, and hoped that they would be adopted by the General Assembly.

45. His delegation joined with others in expressing appreciation to the Secretariat for its efforts to prepare a draft handbook on the peaceful settlement of disputes. Drawing attention to document A/45/436 and Add.1, containing replies received from States and international organizations, he said that Romania favoured greater recourse to the International Court of Justice in cases involving legal disputes. In 1990, his country had begun to withdraw its reservations concerning the compulsory jurisdiction of the Court with regard to multilateral treaties in the humanitarian and human-rights fields.

46. His delegation had suggested that, beginning in 1991, the question of the peaceful settlement of disputes should be considered within the framework of the United Nations Decade of International Law, as the programme for the Decade would

(Mr. Munteanu, Romania)

include appropriate recommendations for strengthening the process of peaceful settlement through the progressive development and codification of international law.

47. Romania had an unshakeable belief in legality and legal institutions. For that reason, it attached great importance to all the activities undertaken by the Special Committee, and hoped that the Committee would continue to give priority to the legal aspects of the maintenance of international peace and security.

48. Mr. GUIBILA (Burkina Faso), referring to the question of the peaceful settlement of disputes between States, said that such disputes were increasingly attributable to economic, social and ecological factors, either directly or indirectly. The current international economic order was either partly or entirely responsible for that state of affairs. Action was required, since a great number of the old problems persisted. The establishment of a more just and equitable international economic order would help to reduce and perhaps even eliminate disputes between States.

49. Although the Charter itself clearly contained the necessary provisions for the maintenance of international peace and security, non-observance of those provisions had led to the adoption of a number of additional instruments. Moreover, since those additional instruments were themselves not being implemented, some Member States believed that a supplementary convention should be prepared on the subject. However, what was actually required was the necessary political will. Argentina and the United Kingdom, which had re-established diplomatic relations early in 1990, thus provided an example that many States would do well to follow. Burkina Faso also wished to stress the importance of the International Court of Justice, and to call on States that had not yet done so to declare that they recognized the Court's jurisdiction as compulsory. Burkina Faso had made such a declaration, and as a result of the referral of its dispute with Mali to the Court in 1986, the hostilities between the two countries had been ended, and confidence and co-operation had been restored between them. That was another example to be followed.

50. UNESCO was to be commended for its contribution in the academic and scientific fields to the promotion of peace. His delegation urged the organs of the United Nations, particularly the Security Council, to co-operate closely with regional and subregional organizations in the maintenance of international peace and security.

The meeting rose at 11.55 a.m.

UNITED NATIONS

General Assembly

FORTY-FIFTH SESSION

Official Records

SIXTH COMMITTEE
13th meeting
held on
Thursday, 11 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 13th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.25 a.m.

STATEMENT BY THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

1. The CHAIRMAN welcomed the President of the International Court of Justice, Judge José María Ruda, Judge Stephen Schwebel, and the Registrar of the Court, Mr. Eduardo Valencia-Ospina. Their presence was particularly welcome since the Committee was considering two issues closely related to the activities of the Court: the peaceful settlement of disputes and the United Nations Decade of International Law. The section of the Secretary-General's report on the Decade concerning increased recourse to the Court demonstrated the importance which Governments attached to strengthening the role and effectiveness of that institution. The increasing tendency of States to accept the compulsory jurisdiction of the Court was a major signal of the importance which States attached to the principles of international justice and peace. If that tendency continued, the Court would be able more fully to play its role as the principal judicial organ of the United Nations. He also noted the Court's major contribution to the progressive strengthening and development of international law.

2. Judge RUDA (President of the International Court of Justice) observed that the Court now had before it a total of eight cases, including, for the first time, one from each continent.

3. He welcomed the suggestion by the Secretary-General in his report on the work of the Organization (A/45/1) that authority to request advisory opinions from the Court should be extended to the Secretary-General. That would give the Court a valuable opportunity to rule on applicable international law in many situations. The Court also welcomed the launching of the Trust Fund to Assist States in the Settlement of Disputes through the Court, which would enable States that could not afford to do so on their own to bring disputes before the Court. The Court looked forward to the United Nations Decade of International Law, which he hoped would enhance its role in the future.

4. The CHAIRMAN asked the President of the Court to convey the Committee's deep respect and admiration for the highly commendable manner in which it was carrying out its noble mission in the service of peace.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/45/33)

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/45/436 and Add.1, A/45/522-S/21795, A/45/527-S/21801; A/C.6/45/L.1)

5. Mr. MIRZAEE-YENGEJEH (Islamic Republic of Iran) noted that, while the end of the cold war prompted hopes for more favourable conditions for peace and understanding among nations, recent developments had aroused concern that co-operation among developed, industrialized, prosperous and powerful States might

(Mr. Mirzaee-Yengejeh, Islamic Republic of Iran)

take place at the expense of the interests and needs of the developing world. The Special Committee on the Charter should assist the United Nations in discharging its responsibilities in the light of changed world circumstances. The Special Committee should continue to explore ways and means of strengthening the role of the Organization with respect to the peaceful settlement of disputes and the maintenance of international peace and security, in a manner which ensured wide participation by the Members of the United Nations.

6. The recent aggression in the Persian Gulf, the second invasion by one State in the past 10 years, indicated that the danger that regional conflicts might erupt into a world-wide disaster still existed. The concerted reaction of the international community in the face of the recent aggression, and the pivotal role of the Security Council, were encouraging. The Security Council, which bore the primary responsibility under the Charter for the maintenance of international peace and security, must take the necessary precautionary measures to retain the initiative and must not allow itself to be bypassed by members acting unilaterally. He emphasized that measures taken outside the United Nations machinery were not consistent with the trend towards strengthening the role of the Organization.

7. After welcoming the progress made in the consideration of fact-finding activities, he said that fact-finding was a preventive measure aimed at peacefully resolving disputes at an early stage. That should be stated clearly at the very beginning of the future instrument on the subject, in the definition of "fact-finding activities". His delegation agreed that the prior consent of the receiving State was essential for the dispatch of any kind of fact-finding mission, would guarantee the co-operation of the receiving State and would facilitate the mission's work. Consent should be expressed explicitly; it could not be presumed by silence. If a sovereign State refused to receive a fact-finding mission, it should not be pressured to supply its reasons. The inclusion in the future instrument of a provision for unilateral declaration of acceptance of fact-finding missions raised serious political, legal and practical problems, and was totally unacceptable to his delegation.

8. Experience in recent years had demonstrated that the Secretary-General was in a better position to carry out fact-finding activities, and he should be authorized to initiate such activities.

9. It was important to recognize the difference between utilizing the information-gathering capabilities of the United Nations and having recourse to fact-finding, which was an exceptional procedure. Fact-finding activities could be carried out in certain circumstances in which information-gathering might not yield objective and verifiable information. In exceptional cases, United Nations officials in a receiving State might be asked to undertake fact-finding activities. Even in such cases, all the requirements for such activities must be met.

(Mr. Mirzaee-Yengejeh, Islamic Republic of Iran)

10. His delegation endorsed the proposal to entrust the Special Committee with the task of studying ways and means of implementing the principles of international law enshrined in the Charter. It was regrettable that the Security Council had failed on various occasions to act decisively and promptly to deal with breaches of the peace and acts of aggression. However, the Council had taken decisive action in the recent case of aggression, and his delegation endorsed the proposal of the Soviet Union to the effect that the permanent members of the Council should pledge to refrain from the threat or use of force in international relations. The proposal should be carefully studied in good faith by the other members of the Council. The inclusion of the subject in the agenda of the Special Committee would represent a contribution by that Committee to the activities of the United Nations Decade of International Law.

11. With respect to the Soviet proposal concerning ways of expanding co-operation between the United Nations and regional organizations, he said that the Charter provisions in that respect were clear. Article 52, paragraph 2, obliged the parties to regional arrangements to "make every effort to achieve pacific settlement of local disputes through such ... arrangements ... before referring them to the Security Council", and Article 52, paragraph 3, made it a duty of the Security Council to encourage such settlement measures. Those provisions did not exclude the possibility that a local dispute could be considered by the Council at the request of one party. In cases of a breach of the peace or act of aggression, the Council clearly had the primary responsibility.

12. Experience in recent years had shown that the Secretary-General could play a significant role in bringing about the peaceful settlement of international disputes. His delegation therefore supported the elaboration of an instrument which would contribute to the enhancement of the Secretary-General's role in maintaining international peace and security.

13. Lastly, he welcomed the progress made on the draft handbook on the peaceful settlement of disputes between States. It should be circulated to the members of the Sixth Committee for study and written comments.

14. Mr. PATRONAS (Greece) welcomed the compromise document which had emerged from the Special Committee on the subject of strengthening the fact-finding capabilities of the United Nations in the field of the maintenance of international peace and security (A/AC.162/L.66). The future document should specifically mention the preventive nature of fact-finding and should also state that fact-finding was crucial for the settlement of disputes.

15. His delegation welcomed the emphasis on strengthening the role of the Secretary-General in undertaking fact-finding missions or using United Nations fact-finding capabilities. The prior consent of the State to which a fact-finding mission was to be sent was essential. In order to strengthen the provisions in the compromise document regarding recourse to fact-finding by the Security Council and the General Assembly (A/C.182/L.66, paras. 32 and 33), the word "should" should be replaced by the word "shall", and the words "wherever appropriate" should be deleted.

(Mr. Patronas, Greece)

16. Although the Special Committee had not considered any specific proposals regarding the peaceful settlement of international disputes, the subject remained of prime importance, and the suggestion that a mechanism should be established for the prevention and settlement of international disputes on the environment merited thorough consideration. Greece welcomed the announcement that the draft handbook on the peaceful settlement of disputes between States would be completed before the next session of the Special Committee.

17. With respect to the rationalization of existing United Nations procedures, his delegation hoped that the document contained in paragraph 86 of the Special Committee's report (A/45/33) would be adopted by consensus.

18. Given the current international climate, the Special Committee could play a major role in promoting the rule of international law by taking up the question of enhancing the system of collective security envisaged in the Charter. It was also essential to deal squarely with situations in which decisions of the United Nations in the field of international peace and security were deliberately flouted, as had occurred in the case of decisions regarding Cyprus. Lastly, his delegation supported the renewal of the mandate of the Special Committee.

19. Mr. SHANNON (Australia) said that the synthesis of the two working papers on fact-finding was a positive step forward in the Special Committee's consideration of that item. The issue of consent still appeared to be a matter of contention; his delegation only wished to note that paragraphs 13 and 14 of the unified document did not appear to conflict with each other. Australia strongly supported the general principle of fact-finding in the context of the maintenance of international peace and security, and could support an even wider use of such mechanisms, particularly calling upon the Secretary-General, in pursuing the peaceful settlement of disputes. The Secretary-General himself, in his report on the work of the Organization (A/45/1), had emphasized that the means at his disposal for gathering the timely, accurate and unbiased information that was necessary for averting violent conflicts were inadequate. His delegation hoped that at its next session, the Special Committee would be able to produce a final text which would give the Secretary-General some of the tools he was looking for.

20. The second important area of progress made by the Special Committee concerned the finalization of the draft document on the rationalization of existing United Nations procedures. His delegation supported the consensus text produced by the Special Committee, and recommended the procedures set out therein. His delegation also noted with satisfaction the assurances of the Legal Counsel that the draft handbook on the peaceful settlement of disputes between States would be completed before the next session of the Special Committee. The handbook would have value for diplomats and policy-makers who might otherwise be prevented by lack of resources from being fully aware of the various ways in which the United Nations system could contribute to the peaceful settlement of international disputes.

21. The Special Committee's general exchange of views on the peaceful settlement of disputes between States adequately underscored the key functional issues in that

(Mr. Shannon, Australia)

area. It seemed that members of the Special Committee were tailoring their remarks under that broad theme more and more to the work which the Special Committee did best, namely, examining and making recommendations about the law of the United Nations. The time had come to remove peaceful settlement of disputes as a separate item from the Sixth Committee's agenda. The subject was so broad and complex that to pretend it had a unique importance to the Sixth Committee was anomalous. Treated thematically, peaceful settlement must remain a vital focus of the work of the Special Committee.

22. The International Court of Justice was integral to the operation of the Charter and a proper subject within the Special Committee's purview. His Government had been a long-standing champion of the ideals on which the Court had been founded, and its support had not diminished now that Australia was involved in a case before the Court as a result of its unqualified declaration accepting the jurisdiction of the Court under Article 36, paragraph 2, of its Statute. More States should make the optional declaration under Article 36, and more treaties should make provision for resorting to the Court in the settlement of disputes. It was most encouraging to see the number of States that had recently withdrawn reservations to their acceptance of the Court's jurisdiction in dispute settlement. His Government knew from practical experience that international litigation was an expensive undertaking, and it therefore supported the Secretary-General's initiative to establish a trust fund to assist those States which had taken the honourable step to resolve otherwise intractable disputes in the Court.

23. With regard to the future work of the Special Committee, his delegation expected that it would have an important role to play in implementing initiatives taken in the context of the Decade of International Law. In the working out of the programme for the Decade, the Special Committee's expertise in the law of the United Nations would no doubt be employed to good effect, without duplicating the work of other bodies. In its future work, the Special Committee would serve itself and the international community best by focusing on particular issues pertaining to the Charter where international lawyers were perhaps better placed than others to help solve problems and further the cause of peace.

24. Mr. SOKOLOVSKIY (Byelorussian Soviet Socialist Republic) said that an increasingly independent world needed a mechanism capable of finding mutually acceptable solutions to common problems. The United Nations had been intended as such a mechanism from its foundation, but only now, after a great breakthrough in international relations, could it act as the unifier of peoples. His country needed such a mechanism just as much as the rest of the international community, for it had undertaken a reorganization of all its structures: its Declaration on Sovereignty had opened the way to full participation in international life.

25. The question of neutrality was most significant, for the Byelorussian SSR stood at the crossroads of Europe and had always been an arena for military activities. It therefore had a vital interest in international efforts to help it acquire the status of a non-nuclear zone and neutral State. There were many

(Mr. Sokolovskiy, Byelorussian SSR)

obstacles to the attainment of that goal, including the dilemma of becoming a non-nuclear part of a nuclear whole. The Byelorussian people had endured horrors under enemy invasion and had suffered as a result of the Chernobyl accident. It therefore saw in the creation of a common European home the guarantee of a secure future.

26. It was against that background that his delegation assessed the latest session of the Special Committee on the Charter, in which it had taken part as an observer. It noted with satisfaction that the propagandistic and declarative statements typical of previous sessions had passed into history, and that the Special Committee had become much more business-like; in that connection, a tribute should be paid to its Chairman, who had indicated, inter alia, that the new climate in international relations had enhanced the productiveness of the session.

27. The preparation of a unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security (A/45/33, para. 68) was an important achievement which would lead to an extension of the United Nations fact-finding role. The new document's concern with prevention was commendable, as was the fact that its recommendations were based on the Charter and on observance of the principle of free choice of the means of peaceful settlement of disputes. It was particularly important that the Special Committee had agreed on the need for the prior consent of a State before a fact-finding mission was sent to its territory. The fundamental changes in international relations might enable the United Nations to extend its fact-finding activities to such areas as the defusing of potential crises, promotion of the peaceful settlement of disputes, monitoring of the implementation of international treaties, and observance of electoral processes. The discussion in the Special Committee had also held the promise of the establishment of a dispute-settlement or fact-finding mechanism with regard to the environment. There was every reason to expect that it would complete the preparation of the fact-finding document at its next session.

28. When completed, the draft handbook on the peaceful settlement of disputes between States would help States to settle disagreements peacefully, and would provide valuable assistance in the preparation of a future document on the peaceful settlement of disputes within the framework of the Decade of International Law. His delegation endorsed what was said in paragraph 77 of the report (A/45/33) about the need to rationalize the work in that area. It also believed that the establishment of the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice would play a useful role. His delegation urged the United Nations to bring its whole dispute-settlement machinery to bear on the conflict in the Middle East in order to prevent an escalation of the hostilities.

29. At its latest session, the Special Committee had completed a draft document on the rationalization of existing procedures of the United Nations (A/45/33, para. 86), which contained proposals for improvement of the work of the General Assembly. The gradual establishment of the principle of adopting "agreed texts",

(Mr. Sokolovskiy, Byelorussian SSR)

recommended in paragraph 1 of the document, was the most effective means of achieving generally acceptable decisions, and would facilitate the Organization's work.

30. As to the future work of the Special Committee, its mandate must be based on the premise that legal means must prevail in the settlement of all contentious issues. Its programme of work might therefore include such questions as expansion of co-operation between the United Nations and regional organizations, broadening the Secretary-General's peace-keeping efforts, and participation in the preparation of a draft general instrument on peaceful settlement of disputes. It might be useful for the Special Committee to consider ways and means of fully implementing the Charter, the norms of international law and related enforcement actions vis-à-vis a State that had breached the peace or failed to comply with Security Council decisions.

31. Mr. YU Mengjia (China) said it was gratifying to note the achievements that had been made by the United Nations and the parties concerned in several areas of international affairs, including the completion of the independence process in Namibia and the search for a political settlement of regional conflicts such as those in Cambodia, Central America, Western Sahara and Afghanistan. Regrettably, however, many regional conflicts had not subsided, and instances of the use of force in settling international disputes were still occurring. China attached great importance to the role of various organs of the United Nations, particularly the Security Council, in the peaceful settlement of international disputes. It had faithfully discharged the responsibilities entrusted to it under the Charter by joining the United Nations in its efforts to resolve regional conflicts and mediate international disputes. Both historical conflicts and new disputes between States or regions could be properly settled by peaceful means and without resort to force, so long as the countries concerned had a sincere desire to settle them and to conduct amicable consultations for that purpose.

32. His Government was of the view that the peaceful settlement of international disputes should be based on a number of principles of peaceful coexistence. All countries of the world, regardless of size, strength or wealth, were independent sovereign States and, therefore, should be equal. Their sovereignty and territorial integrity should be respected. It was not permissible for any country to encroach upon the territory of another or to carry out aggression and expansion under any pretext. The internal affairs of each and every country, including the choice of path of development and social system, should be decided upon only by its own people. No foreign Power had the right to interfere in such affairs, to impose its will on others, or to practise power politics and hegemonism. All countries should respect one another, co-operate to their mutual benefit and live in harmony. It was on the basis of those principles that China had smoothly settled with some countries, through peaceful negotiations and amicable consultations, boundary questions and other issues left over from the past. The Sino-British accord on the question of Hong Kong and the Sino-Portuguese accord on the question of Macao were both cases in point. His delegation therefore remained ready to join fellow delegations in working for the preparation of legal documents promoting the peaceful settlement of international disputes.

33. Mr. RAZMI (Afghanistan) noted with satisfaction that the unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security (A/45/33, para. 68) generally presented a balanced version of the two working papers originally considered by the Special Committee on the Charter. However, some aspects of that highly important topic had yet to be elaborated. For example, paragraph 9 of the unified document, which encouraged States to bring any situation that was likely to threaten the maintenance of international peace and security, and where the facts were in dispute, to the attention of a competent organ of the United Nations, lessened States' obligations under Articles 35 and 37 of the Charter. The paragraph should clearly indicate the obligations of States under the Charter when international peace and security were threatened.

34. The crucial issue of the prior consent of States had raised concerns about the protection of State sovereignty. The matter of the acceptance by Member States of United Nations fact-finding missions gave rise to a question with regard to situations where facts were disputed and where the offending party refused to accept in its territory such a mission. The question was whether or not paragraph 13 of the unified document, by referring to Article 25 of the Charter, implied that such a refusal would be a violation of Article 25, under which Members of the United Nations agreed to accept and carry out the decisions of the Security Council in accordance with the Charter. The question was whether or not that Article applied to a decision by the Security Council on sending fact-finding missions to a given State.

35. Moreover, Article 34 of the Charter authorized the Security Council to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation was likely to endanger the maintenance of international peace and security. If a situation arose where foreign intervention was involved and the offender State did not accept a fact-finding mission, which could provide a direct and credible source for the Council's investigation, the competence of the Council would again be called in question. In the view of his delegation, in matters relating to the maintenance of international peace and security, the authority of the United Nations and the Security Council should be maximized in accordance with the Charter.

36. Turning to the question of the peaceful settlement of disputes, he said that the views of his Government were expressed in specific terms in its letter addressed to the Secretary-General, contained in document A/45/436/Add.1.

37. Ms. DOWSETT (New Zealand) said it was gratifying to see that the work of the Special Committee on the Charter in 1990 had taken place against a background of greatly improved international co-operation. Since the Special Committee's meeting in February, the United Nations membership had faced, in what had happened in Kuwait, one of the greatest challenges to the very principles on which the United Nations Charter was based. The response had been resolute, giving new life to Articles that had been little used before. There were now new possibilities for giving effect to the security framework of the Charter envisaged by the drafters

(Ms. Dowsett, New Zealand)

in 1945. The two items currently under discussion were accordingly regarded by her delegation as amongst the most important on the Sixth Committee's agenda. For the same reason, her delegation would like to see the promotion of the principle of peaceful settlement of disputes clearly established as a major objective of the programme for the Decade of International Law.

38. Effective action by the United Nations was basic to the maintenance of peace and security, and to that end, full use should be made of the Organization's fact-finding capabilities. The unified document on that question represented a concrete step forward, and it was to be hoped that a final text could be adopted within the next year for submission to the General Assembly at its forty-sixth session.

39. New Zealand welcomed the progress made by the Special Committee in completing the draft document on the rationalization of existing United Nations procedures. In particular, it welcomed those proposals aimed at minimizing the duplication of effort.

40. Although the working paper entitled "New issues for consideration in the Special Committee" had not been considered during the 1990 session of the Special Committee, her delegation welcomed the intention of its sponsor to generate thinking on topics that might be appropriate for discussion at a later stage of the Committee's work. The work of the Special Committee should, of course, be aimed at enhancing the effectiveness of the Charter and of the Organization. Careful consideration must, accordingly, be given to whether codification was, in a particular case, an appropriate exercise of the Special Committee's functions. Care would need to be taken to ensure that proposed work did not needlessly duplicate the provisions of the Charter or existing treaty instruments.

41. At its 1990 session, the Special Committee had also had before it the progress report of the Secretary-General on the preparation of the draft handbook on the peaceful settlement of disputes between States. Her delegation hoped that the handbook, when completed, would provide valuable reference material, helping countries to overcome practical problems involved in the peaceful settlement of disputes. The handbook illustrated the wide range of machinery that was available for the settlement of disputes. New Zealand remained strongly committed to the peaceful settlement of disputes, and to the use of appropriate procedures available for that purpose. Her Government's own commitment had been demonstrated by its submission to binding dispute settlement twice in recent years.

42. The International Court of Justice remained central to third-party dispute settlement. New Zealand had, for many years, urged all countries to accept the compulsory jurisdiction of the Court. It welcomed the very recent acceptance by Poland of compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court. As the Court was the principal judicial organ of the United Nations, it was important that lack of funds or legal expertise should in no way prejudice access to it by individual Members where the political will to settle a dispute by that means was shared by the parties to a dispute. The Secretary-General's

(Ms. Dowsett, New Zealand)

initiative to establish the Trust Fund to Assist States in the Settlement of Disputes through the Court was, for that reason, to be welcomed, and her Government was pleased to have been able to make a substantial contribution to the Fund earlier in 1990.

43. Mr. BERG (Germany) said that a look at the agenda of the Special Committee on the Charter prompted reflection on its basic mandate and on its future agenda. The work on the draft on the rationalization of existing United Nations procedures had been concluded. Although on a number of points, the version now before the General Assembly fell short of his delegation's goals, he noted that all in all it contained useful and necessary rules and clarifications which would help improve existing United Nations procedures. The handbook on the peaceful settlement of disputes between States would probably be completed during the 1991 session of the Special Committee. That Committee's main interest had been focused on the working paper on fact-finding, which was also likely to be adopted at the 1991 session.

44. His delegation considered that the Special Committee fulfilled a necessary and useful function in the United Nations system; it followed logically that the Special Committee should also play a part in the Decade of International Law. Preliminary discussions on the programme for the Decade had shown that there was particular interest in dealing with aspects of the peaceful settlement of disputes. Since that was an extremely important issue before the Special Committee, it would only seem natural that the Special Committee, within the framework of the Decade, should deal with specific matters in that area. Since aspects of the peaceful settlement of disputes would thus be dealt with both within the Decade and within the Special Committee, there was no rational need for peaceful settlement to be a separate item on the agenda of the Sixth Committee.

45. In deciding on new items, it was important to avoid diluting the Special Committee's mandate with irrelevant questions and overloading its agenda with unrealistically ambitious projects. Equal attention should be paid to avoiding duplication and overlapping. It was important to avoid subjects that were, a priori, doomed to failure because of their complexity or because they would jeopardize the consensus in the Special Committee.

46. The proposals presented by the Soviet Union during the general debate, as well as in the working paper entitled "New issues for consideration in the Special Committee", were a valuable contribution to the discussion on the future work of the Committee. In particular, his delegation welcomed the ideas on promoting preventive measures by the United Nations. His delegation was particularly grateful that the issue of election monitoring had been addressed, even though, in its view, it did not fall under the category of fact-finding. The election-monitoring missions carried out by the United Nations were part of conflict prevention, and constituted an instrument whose expansion should be considered in the future. That would be more than a contribution to the implementation of fundamental human rights; it would also help to ease internal political and social tensions, and thus to avoid endangering the international situation.

(Mr. Berg, Germany)

47. The concept of conflict prevention was extremely important in the work of the Special Committee. There was still ample room for the United Nations to expand its role in that area, and the Secretary-General had an essential role to play in that regard. Even during a period in which the ability of the United Nations to act under Chapter VII of the Charter was being put to the test, sufficient room must remain for the concept of prevention. The Secretary-General shared that view when, in section III of his report on the work of the Organization (A/45/1), he termed action under Chapter VII a measure of last resort. In his report, the Secretary-General also grappled with the question of the role of the Secretary-General and presented several proposals concerning preventive diplomacy, among them more informal reports by him to the Security Council, outside the scope of Article 99 of the Charter, and improved fact-finding arrangements to strengthen the Council's role in dealing with incipient disputes. His delegation welcomed those proposals and took it that the initiative of the Special Committee concerning fact-finding would represent a needed contribution in that regard.

48. The Secretary-General had stated in his report that the means at present at his disposal for gathering the timely, accurate and unbiased information that was necessary for averting violent conflict were inadequate. He had gone on to say that the Organization's mediatory or investigative capacity should not be kept in reserve until it was too late to avert hostilities. There again, the initiative of the Special Committee would help remedy the situation, so that the United Nations would be able to fulfil its function in the prevention of conflicts and the maintenance of international peace and security.

49. The relevance of fact-finding had been thrown into relief, inter alia, by the example of Cambodia. In connection with the resolution of that complex conflict, during the preparatory stage of a comprehensive peace-keeping operation, the Secretary-General had sent a total of five missions to Cambodia to explore primarily the logistic and administrative prerequisites for the operation. No doubt their activities represented a contribution to the implementation of the settlement plan.

50. The progress made by the Special Committee on the issue of fact-finding was demonstrated in the unified document (A/45/33, para. 68) produced before the end of the 1990 session. The Special Committee would be able to embark on concrete text negotiations at its 1991 session. Two issues which had been discussed at length by the Special Committee would probably need further consideration, namely, the question of the receiving State's prior consent to a fact-finding mission, and the enhancement of the general information-gathering capabilities of the Secretary-General. The opinion voiced in the Special Committee that the existing capabilities were sufficient was debatable, in view of the Secretary-General's candid statement on that question. If fundamental misgivings against the proposed rules persisted, they should be re-examined in the light of the Secretary-General's renewed appeal.

51. The question of consent to a fact-finding mission touched upon fundamental issues that were also addressed in the Charter. In that context, the sponsors of

(Mr. Berg, Germany)

the unified document had repeatedly pointed out that their initiative represented policy suggestions, not a restating of law. One of those suggestions was contained in paragraph 14 of the draft, according to which States should be encouraged to follow a policy of admitting United Nations fact-finding missions to their territory. To rule out any doubt, however, paragraph 13 stated unambiguously that the prior consent of the receiving State was required before a fact-finding mission could be sent. That structure made it clear that the aim of the paper - a higher level of co-operation of States with the United Nations - was fully consistent with the principle of sovereignty.

52. In conclusion, he wished to draw attention to the remarks made by the Secretary-General in section I of his report on the work of the Organization, in which he had stressed that the Charter gained richer meaning as political evolution progressively enlarged and classified the scope of its principles. His delegation fully shared that evaluation, and considered that the importance of the Special Committee lay in its task of helping to keep the Charter as living law, thereby further strengthening the United Nations. His delegation would continue to support those endeavours in the future.

The meeting rose at 11.45 a.m.

UNITED NATIONS

General Assembly

FORTY-FIFTH SESSION

Official Records

SIXTH COMMITTEE
14th meeting
held on
Friday, 12 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 14th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.20 a.m.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/45/33)

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/45/436 and Add.1, A/45/522-S/21795, A/45/527-S/21801, A/45/597, A/45/598-S/21854, A/45/600-S/21857; A/C.6/45/L.1)

1. Mr. ADHIKARI (Nepal) said that, as an original member of the Special Committee on the Charter, Nepal had always attached great importance to its work. Since 1987 it had strongly supported United Nations fact-finding missions and in 1988 it had endorsed the Japanese proposal to commission the Special Committee to study that issue. At the forty-fourth session of the General Assembly it had commended the working papers contained in paragraphs 20 and 51 of the Special Committee's report (A/44/33) as providing a sound basis for further discussion. Now the unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security (A/AC.182/L.66) deserved special consideration.

2. His delegation had always believed that the Security Council should play an active role in determining the existence of threats to international peace and security. The mechanism of fact-finding missions should be strengthened and an early-warning system established. However, paragraph 6 of the unified document provided that fact-finding missions could be undertaken by the Secretary-General, by the Security Council or by the General Assembly. In order to simplify things, the matter should be left to the Secretary-General acting on the instructions of the Security Council and/or the General Assembly. Paragraphs 6 and 7 should therefore be combined into one, but the new provision should not hinder the functions of the Secretary-General under article 99 of the Charter.

3. There was no reason for the inclusion, in paragraph 13, of the requirement of prior consent of a State to a fact-finding mission. Such a requirement would cause a delay during which the true facts were likely to fade away. If the requirement was dropped, paragraph 17 might not be necessary. In paragraph 22 (d) there should be a specific mention of governmental and non-governmental bodies after the words "among themselves", and then the sentence should continue "or with all persons", for most developing countries employed different procedures for governmental and public concerns regarding disputes.

4. It might be useful to discuss a decision-making mechanism to complement the fact-finding mission. All fact-finding missions should also be regarded as evidential in the settlement of international disputes, and the International Court of Justice and other international tribunals should take their reports into consideration. The Committee should discuss further the comments made by his delegation before finalizing a draft resolution on the topic.

(Mr. Adhikari, Nepal)

5. Chapter IV of the Special Committee's report (A/45/33), on peaceful settlement of disputes between States, seemed to indicate that a more detailed discussion of the subject should be held under the agenda item on the Decade of International Law. At the time of the establishment of the Special Committee in 1975 his delegation had shared the view that the United Nations had contributed significantly to the maintenance of international peace and security. However, since then the United Nations had not been able to live up to expectations in that field. Its failure could not be attributed solely to the Charter but rather to the lack of political will on the part of some Member States to respect the Charter. His delegation was pleased to note that its 1975 position was now reproduced in paragraph 73 of the report.

6. The question of compulsory jurisdiction also related to the political will of States. A certain super-Power had denounced the jurisdiction of the International Court of Justice merely because the Court had ruled against it in a particular case. That super-Power had thus damaged its credibility. His delegation had supported the 1988 Soviet proposal that the permanent members of the Security Council should accept the compulsory jurisdiction of the Court and encourage other States to do so. Because of non-compliance with its decisions the Court's role had diminished, while the number of conflicts had increased. There must be additional outside encouragement for countries involved in conflicts to take their disputes to the Court.

7. Nepal had also welcomed the Manila Declaration on the Peaceful Settlement of International Disputes. The Secretary-General's report on co-operation between the United Nations and the Asian-African Legal Consultative Committee (A/45/504) also urged greater use of the International Court and implementation of the Manila Declaration. His delegation suggested in fact that all States should comply with the Declaration and it shared the widely held view that the agenda item under discussion should be dealt with under the Decade of International Law. Obviously, if every item was taken up separately, there would remain nothing to discuss under the Decade. It was also necessary to avoid the duplication evident in the multiplicity of legal instruments on the peaceful settlement of disputes - duplication which highlighted the need to rationalize the work of the United Nations. It was time to set aside theoretical issues and focus on practical ones. What was lacking was not law but rather the will to obey the law.

8. Lastly, his delegation was happy to announce the change in Nepal from an absolute monarchy to a Government that respected the sovereignty of the people. The country's foreign policy had consequently undergone a radical change; the new Government was ready to ratify and accede to international conventions and reaffirmed its commitment to the principles and rules of international law.

9. Mr. KOSTOV (Bulgaria) said that his delegation welcomed the positive changes which had taken place in the world since the forty-fourth session of the General Assembly, for they had rekindled faith in the United Nations. The decline of East-West rivalry and the new constructive co-operation among States had enabled the United Nations to start implementing provisions of the Charter which had once

(Mr. Kostov, Bulgaria)

seemed stillborn. The effective measures recently taken by the Security Council under Chapter VII were an excellent example in that respect. Bulgaria strictly abided by Security Council resolutions in the conviction that the sovereignty and territorial integrity of all States was a common value which should be protected by the world community. The high standards by which the current crime against international law was being judged should be applied to every act of aggression regardless of the perpetrator.

10. On the question of fact-finding by the United Nations, his delegation thought that the link between the maintenance of international peace and security and the prevention and peaceful settlement of disputes, as expressed in paragraph 1 of document A/AC.182/L.60, should be mentioned specifically in the unified document (A/AC.182/L.66), for such an approach was in accordance with Article 1, paragraph 1, of the Charter. It would likewise be appropriate to bring the language of the unified document into line with Chapter VI of the Charter: both disputes and situations which might give rise to a dispute should be identified as requiring the attention of fact-finding missions.

11. Bulgaria welcomed the inclusion, in paragraph 13, of the concept of securing the consent of a State prior to the sending of a fact-finding mission and it agreed with other delegations that the requirement to indicate reasons for not admitting a mission was not appropriate. The principle of co-operation of States, now contained in paragraph 21, was essential to a mission's success; the correlation with paragraphs 22 and 23, which elaborated on the principle, should be expressed more explicitly. Throughout the text a clearer distinction should be made between the different stages of fact-finding activities and the different technical terms used. Such a distinction would not only give a clearer picture of fact-finding activities but also ensure the assignment of responsibilities to United Nations organs in accordance with the Charter. With regard to paragraph 27, the fact-finding body should be entitled to establish its rules of procedure unless they had already been included in a legal instrument.

12. His delegation noted with satisfaction that, with the instruments already adopted and with the unified document on fact-finding and the working paper on the resort to a commission of good offices, mediation or conciliation within the United Nations, the Special Committee would finally establish a comprehensive set of rules for the discharge of United Nations responsibilities in the maintenance of international peace and security. It emphasized that Chapter VII of the Charter could be applied effectively if all its provisions were matched with appropriate legal remedies and implementation procedures. Special attention should be paid to Articles 49 and 50 in that respect, for the international community was aware that implementation of enforcement measures under Article 41 might have a heavy impact on the economy of States applying them. That was currently the case with Bulgaria as a result of its strict implementation of the sanctions against Iraq. It had requested consultations with the Security Council under Article 50; one of the reasons for the continuing absence of a response might well be the lack of guidelines in the matter. As the Finnish delegation had suggested, guidelines should be prepared to enable the competent United Nations organ and the State concerned to exercise their rights and discharge their duties under Article 50.

(Mr. Kostov, Bulgaria)

13. Concerning chapter IV of the report, his delegation noted that much of the Special Committee's current work on fact-finding activities involved encouragement of third-party participation in the peaceful settlement of disputes. That issue would also be a significant aspect of the programme of the Decade of International Law. The Special Committee should play a role, perhaps by preparing a general instrument on peaceful settlement. His delegation welcomed the assurance that the draft handbook on peaceful settlement would be finalized before the Special Committee's next session, and it noted with satisfaction the completion of the draft document on rationalization of existing United Nations procedures, which could be adopted as an addendum to the rules of procedure of the General Assembly.

14. Bulgaria welcomed the Soviet proposals for new issues for consideration in the Special Committee, in particular the idea of a draft general instrument on peaceful settlement of disputes and the question of enforcement actions vis-à-vis a State that had breached the peace or failed to comply with Security Council decisions. It also welcomed the Austrian proposal for a mechanism for prevention and solution of international environmental disputes.

15. Mr. MOLNAR (Hungary) praised the Special Committee for its tireless efforts to produce the unified working paper on fact-finding by the United Nations in the field of the maintenance of international peace and security. That paper should contain policy recommendations to encourage States to admit fact-finding missions to their territory and to co-operate fully with them. Such activities by the United Nations did not pose a threat to the sovereignty of States; on the contrary, by impartially presenting relevant facts to the international community, such activities could protect the interests of States, particularly smaller ones.

16. His country considered the peaceful settlement of disputes to be a cardinal principle of international relations and international law and was therefore pleased to note the positive changes generated by the new spirit being demonstrated by States in that regard. His delegation was particularly gratified by the increased willingness of States to take advantage of the dispute settlement possibilities provided by various third-party mechanisms. His country supported efforts to enhance the effectiveness of the International Court of Justice as the principal judicial organ of the United Nations. As a reflection of its new position regarding the Court, his country had since the forty-fourth session of the General Assembly withdrawn all its previous reservations to treaties regarding clauses on the jurisdiction of the Court. In recognition of the increasing role played by the Court, his country had also contributed to the Trust Fund established by the Secretary-General to facilitate access by certain States to the Court.

17. His delegation hoped that the draft handbook on the peaceful settlement of disputes between States would be completed before the next session of the Special Committee, and looked forward to its wide distribution.

18. Although his country supported any constructive step to strengthen the principle of, and existing methods to bring about, the peaceful settlement of disputes between States, it felt that since the topic was on the agenda of the

(Mr. Molnar, Hungary)

Special Committee and would be discussed during the United Nations Decade of International Law, it was unnecessary to keep the issue as a separate item on the agenda of the Sixth Committee.

19. He commended the Special Committee for its tireless efforts which had resulted in the draft document on the rationalization of existing United Nations procedures. Lastly, in view of the general agreement on the need to enhance the role of the United Nations, he pledged his country's continued commitment to the work of the Special Committee and looked forward to new proposals aimed at the attainment of that goal.

20. Mr. TREIKI (Libyan Arab Jamahiriya) said that his delegation set great store by the work of the Special Committee and followed its deliberations closely. Its hope now was that the Special Committee would produce the desired results and strengthen the role of the Organization in such a way as to ensure the proper maintenance of international peace and security. Under the Charter, the principal responsibility for that task lay with the Security Council, but his delegation wondered whether the Council had really been able to fulfil that responsibility in accordance with the purposes and principles of the Organization. Rather than perpetuate the hegemony exerted by the countries which emerged victorious from the Second World War, it was time to re-examine the relationship between States, whether large or small, strong or weak. There was an unjustifiable contradiction between the provisions of Chapter I of the Charter, which emphasized the principle of equal rights for nations, and those of Chapter V, concerning the membership of the Council. The veto privilege accorded to the Council's permanent members had clearly paralysed action on problems which affected the interests of the major Powers. Action under Chapter VII in response to acts of aggression frequently proved impossible. It was time to acknowledge that the situation had changed, as had been recognized by the Prime Minister of Italy recently when he called for a change in the Council's composition. Following the end of the cold war, the Council had indeed finally managed to work effectively and collectively in its response to the Gulf crisis. Nevertheless, its treatment of other issues, such as the question of Palestine, continued to be biased and illogical. There was a tendency for the five permanent members to act as they wished, while relegating the other 10 members to a status equivalent to that of observers. A change was required if the Council was truly to work for international peace and security rather than for the benefit of any single State or group of States.

21. His country had since 1975 been pointing out the negative consequences for international peace and security of the veto privilege, and its efforts to ensure that Council decisions were based on the equal participation of all members of the international community had been reflected in resolutions and statements adopted by the Movement of Non-Aligned Countries, the Organization of African Unity and the Organization of the Islamic Conference. Although a minority of States continued to reject those efforts, his delegation still hoped that the Organization might be set on a more appropriate course. It therefore once again urged the Special Committee to consider strengthening the role of the Council by eliminating misuse of the procedure requiring consensus among its permanent members, to emphasize that

(Mr. Treiki, Libyan Arab Jamahiriya)

responsibility for the maintenance of international peace and security was shared by all States Members of the United Nations on an equal basis and to strengthen the role of the General Assembly in the that area.

22. Given its interest in the work of the Special Committee, his delegation hoped that that Committee's membership could be broadened and the principle of equitable geographical distribution applied in order to allow more Member States to take part in its work. The three principal subjects addressed by the Special Committee could all generate needed improvements if properly carried to their conclusion, but he hoped that Member States would be given an adequate opportunity to give careful consideration to the unified document on the subject of fact-finding and that more light would be shed on its various provisions, in order to avoid any divergence in interpretation. The draft handbook on the peaceful settlement of disputes between States would certainly constitute an important legal tool, and the call for preparation of a universal convention on the peaceful settlement of disputes was likewise positive. His delegation also joined others in encouraging recourse to the International Court of Justice, to which it had referred its own border dispute with Chad, and full respect for the Court's judgments. In conclusion, he urged that certain provisions of the Charter be amended in order better to conform with the purposes and principles of the Organization and noted that his delegation would submit a draft resolution in that connection.

23. Mr. MONAGAS LESSEUR (Venezuela) paid a tribute to the Special Committee for the timely and valuable results of its work. The unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security (A/AC.182/L.66) testified to the spirit of co-operation which had enabled the Special Committee to reach solutions acceptable to all. He stressed the importance of systematizing the fact-finding efforts of the United Nations in that field and of strengthening to the fullest extent possible all action by the United Nations in its sphere of competence. At the current critical juncture, when the world appeared to be running out of means to safeguard and maintain international peace and security, no effort should be spared to ensure that the United Nations took action that was as as effective as possible. Accordingly, the fact-finding capabilities of the United Nations should be expanded, and his delegation looked forward to the final document on the subject from the Special Committee.

24. With regard to the structure of that document, the text should be divided into chapters with headings. A preamble should contain the general provisions and the definition of fact-finding, and separate chapters should be devoted to the powers and duties of United Nations organs, the activities, duties and rights of States; procedures; and the fact-finding missions and their members.

25. The document should specifically recognize the right of a State to refuse to admit certain members of a particular fact-finding mission to its territory. Although his delegation would not formally oppose the inclusion of provisions for general unilateral declarations by States whereby they committed themselves to admitting a fact-finding mission, it believed that States might not be willing to make such declarations; it questioned their value and felt that they did not constitute an effective commitment on the part of States.

(Mr. Monagas Lesseur, Venezuela)

26. The privileges and immunities of the members of fact-finding missions should be spelled out clearly in the document. Some of the privileges and immunities specified in the Convention on the Privileges and Immunities of the United Nations might not be applicable to certain fact-finding missions and, because of the special nature of a fact-finding mission's work, other privileges or immunities not spelled out in the Convention might be applicable.

27. Besides being required to respect the laws and regulations of the receiving State, members of fact-finding missions also should be subject to other obligations, including the obligation to refrain from interfering in the internal affairs of that State. Accordingly, the Special Committee should consider expanding the scope of the relevant provision. The document also should state clearly that the receiving State should have the opportunity to express its opinion on the facts reflected in the fact-finding mission's report. The Special Committee should consider all the implications of that delicate issue.

28. The list to be prepared by the Secretary-General of experts available for fact-finding missions should be made available to all interested States and should include individuals from different geographical regions. Furthermore, a number of phrases in the unified document, including "relevant areas" and "early warning", should be clarified in the final text.

29. His country had supported all efforts by the international community to elaborate, through juridical norms, the principle of the peaceful settlement of disputes between States. He commended the Special Committee for its accomplishments in that regard and said that his delegation would welcome further progress on the development of that principle, such as the proposal made at the Special Committee's most recent session on enhancing co-operation between the United Nations and regional organizations with respect to the peaceful settlement of disputes and the maintenance of international peace and security. It was imperative to enhance the role of the International Court of Justice and, to that end, to adopt measures to facilitate access by States, particularly the less developed countries, to that institution. In that connection, he welcomed the establishment of the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. He also looked forward to the early completion and wide distribution of the draft handbook on the peaceful settlement of disputes between States. Lastly, he commended the Special Committee for its intensive work on the draft document on the rationalization of existing United Nations procedures.

30. Mr. AL-SABEEH (Kuwait) said that, at a time of increasing international reconciliation and peaceful settlement of differences, which augured well for a bright new era of peaceful coexistence, the dictatorial régime of Iraq had shown its utter disdain for such developments by invading the sovereign State of Kuwait. The Iraqi régime's continuous involvement in confrontations and wars over the past decade was sufficient indication of the fact that it did not believe in the principles of the Charter. His country, on the other hand, had, before the invasion, expressed its readiness to discuss the issues raised by Iraq in the

(Mr. Al-Sabeeh, Kuwait)

context of a neutral Arab committee. It had also appealed for mediation by other Arab States and even welcomed direct negotiations with Iraq in Saudi Arabia. Following the invasion, it had taken its case to the League of Arab States and the Security Council. However, the Iraqi régime continued to block all efforts to achieve peace, its own so-called "peace initiatives" being no more than the last gasps of a dying régime which sought to link the invasion to other irrelevant issues.

31. It was his country's belief that any peace proposal, whether Arab or international, must conform with international law and those resolutions of the League of Arab States and the Security Council which called for the immediate, complete and unconditional withdrawal of the Iraqi occupation forces, the full restoration of Kuwait's sovereignty and the return of its legitimate Government. A better world could be achieved only by emphasizing the importance of the role played by international and regional organizations, strengthening co-operation between them and asserting the principle of the peaceful settlement of disputes.

32. Mr. PAWLAK (Poland) said that the response by the Security Council and the States Members of the United Nations to the crisis in the Persian Gulf showed that despite fruitless efforts undertaken in similar situations in the past, it was indeed possible for the existing mechanisms provided for in the Charter to deal with breaches of international law to function effectively. However, the implementation of those provisions did not guarantee a peaceful solution of the crisis, and there was still an urgent need for additional mechanisms to strengthen the role of the United Nations. He emphasized the value of the recommendations contained in the working paper submitted by the Soviet Union (A/AC.182/L.65) on enhancing the role of regional organizations in the settlement of international disputes. It was important to recognize in which regions such organizations were expected to play a prominent role. In view of the remarkable political changes now taking place in Europe, it was not yet possible to determine what role regional organizations would play there in the context of the settlement of international disputes.

33. His delegation had always wholeheartedly supported all peace-making efforts of the Security Council and the Secretary-General and, underscoring the value of the personal factor in such efforts, he expressed his delegation's admiration for the Secretary-General's many successes in that regard.

34. His delegation had followed the discussion on fact-finding activities by the United Nations with particular interest and welcomed the efforts made thus far to elaborate a detailed legal framework for such activities. While the prior consent of the receiving State to the sending of a fact-finding mission was essential, his delegation welcomed the recognition in paragraph 13 of the unified document (A/AC.182/L.66) of the importance of Article 25 of the Charter. His delegation welcomed the inclusion in the unified document of the concept of unilateral declarations by States whereby they committed themselves to admit a fact-finding mission to their territory. Similarly, his country had recently unilaterally accepted the compulsory jurisdiction of the International Court of Justice, and it encouraged all States to do the same.

(Mr. Pawlak, Poland)

35. He hoped that the draft handbook on the peaceful settlement of disputes between States would be completed before the next session of the Special Committee, in a form that would permit it to be updated easily.

36. Recalling the statement by his country's Minister for Foreign Affairs before the General Assembly, he stressed Poland's keen interest in the progressive development and codification of international law, its support for the United Nations Decade of International Law and its belief in the value of submitting conflicts between States to the International Court of Justice.

37. Because the maintenance of international peace and security was the most vital task of the United Nations, the subject was discussed in various United Nations bodies. The rationalization of existing United Nations procedures and a clearer division of labour among the committees of the General Assembly would help to avoid duplication of efforts.

38. Ms. RODRIGUEZ (Chile) said that peace was a dynamic process which could only be preserved through the co-operation of every member of the international community. The adoption of specific norms concerning the use of the means for preventing breaches of the peace provided by the Charter of the United Nations could help to alleviate tensions and prevent violence between States. In that regard, the unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security prepared by the Special Committee deserved careful analysis; it should be approved only when its provisions fully reflected the opinions of Member States. Once that was the case, it could become one of the many elements of a legal foundation for a coherent strategy of peace, the need for which had been stressed by the Secretary-General in his report on the work of the Organization (A/45/1). Indeed, the Secretary-General had stated that no coherent strategy of peace had been put in place but that the Organization was now presented with a unique opportunity to work out such a strategy, provided there was a refreshed political will and long-term thinking that was not overwhelmed by the perceptions and concerns of the moment, as well as a clear understanding of the means that could be employed for making, keeping and building the peace.

39. In the view of her delegation, fact-finding activities must be based on the prior consent of the States in whose territories they were to be carried out. That principle was reflected in the first part of paragraph 13 of the unified document; it was not fully established, however, inasmuch as the omission of the word "express" in the text made it necessary to interpret the provisions of paragraphs 16 and 17, which seemed to imply the requirement of a formal expression of acceptance on the part of the States in which the fact-finding activities would be carried out. At the same time, the last part of paragraph 13, which referred to Article 25 of the Charter, should be deleted or replaced by the expression "without prejudice to the obligations imposed by the Charter". In addition to bringing paragraph 13 in line with the provisions of paragraph 39 of the same draft, such an amendment would establish the principle that fact-finding was an activity designed to ascertain facts which the competent United Nations organs needed to exercise

(Ms. Rodriguez, Chile)

effectively their functions in the field of the maintenance of international peace and security. Consequently, it would also make it clear that although the Security Council had the primary responsibility in that area, fact-finding should not be considered or imposed as a coercive measure, but should rather be conceived as a preventive mechanism aimed at promoting the establishment and maintenance of international peace and security. Following that same line of thought, her delegation felt that the paragraph on prior consent should be placed in section I of the draft, as it was one of the basic and essential aspects of the procedure envisaged in the text.

40. Accordingly, the order of some of the paragraphs of the draft should be changed, and some of them should be amended for the sake of clarity. Such was the case with paragraph 4, which should establish that the sending of a fact-finding mission should be considered secondary to the use of the existing information-gathering capabilities of the Secretary-General in connection with events which might affect the maintenance of international peace and security. Her delegation hoped that the debate to be held at the next session of the Special Committee would lead to an agreed text.

41. Turning to the question of the peaceful settlement of disputes between States, she said that her delegation appreciated the efforts made by the Secretary-General on the draft handbook, which was expected to be completed in time for the next session, and which would undoubtedly help to strengthen the principle set forth in Article 2, paragraph 3, of the Charter. She noted with satisfaction the views expressed by several delegations on the need to strengthen the International Court of Justice; the Court should be asked to give advisory opinions more frequently, especially with regard to matters which could not be settled by the international organizations themselves. It was important to take advantage of the Court's potential and to integrate it more fully in the United Nations system. The role of the Court in contentious cases should also be stressed; in other words, it should be used to administer justice and to hand down binding decisions on the substance of cases brought before it. On the question of acceptance of the Court's jurisdiction, she drew attention to the fact that the American Treaty on Pacific Settlement of 1948, known as the Pact of Bogota, to which her country was a party, included a provision whereby the States parties to the Treaty recognized as compulsory ipso facto the jurisdiction of the Court for matters envisaged in Article 36, paragraph 2, of its Statute.

42. The draft document on rationalization of existing United Nations procedures prepared by the Special Committee, if approved, would help the United Nations system to function more effectively. With regard to paragraph 4 of that text, on simplification of the agenda of the General Assembly, she wished to point out the need for a rationalization of the Organization's work in the area of peaceful settlement of disputes, a subject which was currently being dealt with by the Sixth Committee and also in the context of the Decade of International Law.

43. Mr. BELLOUKI (Morocco) said that the new spirit of interdependence prevailing in the international community was bound to add lustre to the principles embodied in the Charter of the United Nations. The Special Committee on the Charter had an important role to play in helping the United Nations to become the pivot of legal and political arrangements governing world affairs. The rules of international law must be applied generally, impersonally and even-handedly in any action undertaken by the United Nations. The Middle East was a test region for the application of the principle of equality before the law. Consequently, the relevant Security Council resolutions must be applied equally in connection with the Iraqi aggression against Kuwait and with the inadmissible acts of Israel, especially its recent action at Al-Quds (Jerusalem), a holy place for the Muslim world. It was important to strengthen the role of the United Nations, with due respect for the equilibrium of its principal organs, whose effectiveness depended basically on the political will and good faith of Member States.

44. Respect for legality must remain intact, regardless of time and place, and fact-finding activities played an important part in ensuring that respect. Before a fact-finding mission was sent, however, the United Nations should make sure that the resources of bilateral or regional diplomacy had been exhausted and that the State concerned had given its prior consent to the mission. The mission should report the facts to the sending body - preferably the Secretary-General - which should then evaluate them. The principle of prior consent - which should be stated clearly in the text to be adopted - entailed an obligation on the part of the receiving State to co-operate; the receiving State should also be entitled to express its views on the content of the fact-finding mission's report. Fact-finding activities, which should not be jurisdictional in nature, were very important in the prevention and settlement of conflicts or dangerous situations. Preventive diplomacy should also play a predominant role through the strengthening of early-warning and information-gathering mechanisms, as well as through the promotion of the peaceful settlement of disputes between States, which should be the primary principle applied at the regional level.

45. His delegation noted with satisfaction the progress made by the Secretariat in its efforts to complete the handbook on the peaceful settlement of disputes between States in time for the 1991 session of the Special Committee. The handbook would undoubtedly greatly facilitate discussions on the question of the peaceful settlement of disputes in the context of the Decade of International Law.

46. The most tangible result of the Special Committee's work had been the completion of the text on rationalization of existing United Nations procedures, which should help to increase the productivity of the United Nations. It was important, however, to caution against the use of the rule of consensus in such a way as to paralyse action by United Nations bodies.

47. The proposals presented by the Soviet delegation at the 1990 session of the Special Committee, in the working paper on new issues for consideration in the Special Committee, deserved careful attention. His delegation noted with special satisfaction the proposals on ways of expanding co-operation between the United Nations and regional organizations and on broadening the peace-making efforts of

(Mr. Bellouki, Morocco)

the Secretary-General. His delegation supported the idea of studying the question of the application of Security Council resolutions and of studying the questions of strengthening the collective security régime and the effectiveness of the United Nations system as a whole. Consideration should also be given to the questions of exercising the veto in moderation and of seeking consensus through the exercise of political will. His delegation trusted that the strengthening of the United Nations and increased respect for the rule of law in international relations would pave the way for a new legal order. That new legal order should in turn eliminate the spectre of nuclear destruction and give impetus to a process of development in the countries of the third world, laying firm foundations for mutually advantageous international co-operation.

48. Mr. NASIER (Indonesia) said that the prevailing political landscape, in which a new setting for international relations was emerging, would provide the Special Committee with new opportunities and challenges. His delegation welcomed the progress made by the Special Committee in preparing a unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security. However, there were certain limitations to United Nations mediation efforts emanating from the binding provisions of Article 2, paragraph 7, of the Charter. State practice in the application of that provision had not always been consistent. Some Member States might find their domestic jurisdiction restricted by United Nations mediation efforts. In the view of his delegation, mediation by the United Nations did not of itself constitute intervention in or encroachment on domestic jurisdiction. In fact, the United Nations had engaged successfully in such activities in addressing, inter alia, issues such as apartheid and denial of the exercise of the right of self-determination by the inhabitants of colonial territories. Nevertheless, in order to give due regard to the question of State sovereignty, more detailed discussions should be held on the subject of fact-finding missions, in particular on the significant issues of access and prior consent. The consolidation of those proposals would make a substantial contribution to enhancing the Organization's mediating and investigative capabilities, especially in the context of peace-keeping and peace-making endeavours.

49. Greater use should be made of the Secretary-General's good offices, which could be applied in situations in which common diplomacy would not bring results. Such activities by the Secretary-General could facilitate the settlement process and mitigate conflict by serving as a means of communication and compromise. The role of the Secretary-General in undertaking fact-finding activities was fairly well-defined. In that connection, it was important to mention that the prerogatives of his office stemmed from Article 99 of the Charter, which was also the basis for the concept of preventive diplomacy.

50. The mechanism for the peaceful settlement of disputes had been well established for the past four decades, as it was contained in Chapters VI and VII of the Charter and was embodied in general principles of international law. It was worth noting that the peaceful settlement of disputes appeared in the Charter not as an objective in itself but as a basis for achieving the primary objective of the

(Mr. Nasier, Indonesia)

United Nations, which was to maintain international peace and security. The subject was of the utmost importance and should be included in the work of the General Assembly, as it would certainly be one of the main issues taken up in the context of the Decade of International Law.

51. His delegation noted with satisfaction the extremely valuable work done by the Secretariat in preparing the draft handbook on the peaceful settlement of disputes, which would prove to be a truly useful instrument, particularly for developing nations, in the context of the Decade of International Law.

52. Lastly, his delegation joined others in commending for adoption by the General Assembly the draft text on the rationalization of existing United Nations procedures.

The meeting rose at 12.20 p.m.